STATE OF MICHIGAN

COURT OF APPEALS

FIMEX UNITED, L.L.C, f/k/a FIMEX AMERICAS CORPORATION, f/k/a FIMEX CORPORATION, Plaintiff-Appellee,	UNPUBLISHED April 17, 2007
v	No. 273018 Wayne Circuit Court
DAIMLER CHRYSLER CORPORATION, f/k/a CHRYSLER CORPORATION, Defendant-Appellant.	LC No. 06-605190-CK

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment entered in favor of plaintiff for $97,045.23, plus interest and costs, in accordance with an arbitration award. We affirm. This case is being decided without oral argument under MCR 7.214(E).

I. FACTS

Plaintiff was an automobile parts distributor that entered into a contract with defendant whereby defendant agreed to purchase plaintiff's inventory of Chrysler, Mopar, and Jeep parts. The inventory list was to be jointly prepared, with prices proposed by plaintiff and approved by defendant. For any parts not listed on the inventory, prices were to be calculated according to either price lists or invoices provided by plaintiff. The agreement stated that defendant was not required to purchase unpriced items. An arbitration clause was also included in the agreement. In early 1992, plaintiff asked for pricing information for certain unpriced parts, with no response from defendant. Defendant then arranged to sublease from plaintiff a warehouse that contained parts subject to the agreement. Plaintiff returned to the warehouse to find that defendant had already sold the parts.

The parties engaged in arbitration under the agreement, where plaintiff addressed five groups of parts. Groups I and II are at issue here. Plaintiff alleged that even though defendant was under no obligation to purchase the parts from plaintiff, defendant took and sold the parts, and was thus obligated to pay for the parts. Since the request for pricing information was never answered, plaintiff argued that the price should be determined under the Uniform Commercial Code (UCC). Defendant disagreed, arguing that application of the UCC was outside the

parameters of the agreement. The arbitrator agreed with plaintiff, awarding plaintiff $97,045.23 plus interest and costs. Defendant failed to satisfy the ward, and plaintiff filed suit in circuit court. Defendant argued that the award should be vacated because the arbitrator committed errors of law, and plaintiff responded with its own motion for summary judgment. The circuit court granted plaintiff's motion and ordered defendant to pay the award. Defendant argues on appeal that the court erred by confirming the arbitrator's decision.

II. STANDARD OF REVIEW

We review de novo a circuit court's decision to enforce, vacate, or modify an arbitration award. *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003). Under MCR 3.602(J)(1)(c), an arbitration award may be vacated if the arbitrator exceeded granted powers. *Dohanyos v Detrex Corp*, 217 Mich App 171, 174-175; 550 NW2d 608 (1996). "[A]rbitrators can fairly be said to exceed their power whenever they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law." *DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982).

III. ANALYSIS

Defendant argues that the arbitrator exceeded his authority because he calculated damages for the Group I and Group II claims in a manner not authorized by the parties' agreement, and addressed the Group III claim although it was a matter that was not within the scope of the arbitration provision.

The arbitrator did not exceed his powers in his resolution of the Group I and Group II claims. Defendant does not assert that the dispute with respect to the Group I and Group II claims was not within the scope of the agreement to arbitrate. Rather, defendant insists that in the absence of evidence necessary for calculation of a price under the two formulas in the parties' agreement, the arbitrator should not have awarded plaintiff any damages for defendant's selling of the parts from the warehouse. However, the formulas were to be used to calculate the price for the parts pursuant to an agreed procedure. Defendant departed from that procedure when it sold and disposed of unpriced parts from a warehouse it subleased from plaintiff. The agreement did not specify a method for determining price in that instance. The agreement did state that the laws of this state governed it. Under the circumstances, the arbitrator did not exceed his powers by relying on the Michigan Uniform Commercial Code, MCL 440.1101 *et seq.*, to assess the value of the parts.

The arbitrator also did not exceed his powers in his resolution of the Group III claims, which concerned a miscount of cases of parts. The settlement agreement stated, "Disputes under paragraph 5 of this Settlement Agreement shall be resolved by binding mediation . . . ." Paragraph 5 addressed the purchase of parts. It included provisions for the parties to jointly conduct a physical inventory and prepare a schedule. A dispute concerning the inventory and the number of cases actually acquired by defendant is within the scope of the arbitration provision of the parties' settlement agreement, and the arbitrator did not exceed his authority by addressing it.

Affirmed.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Bill Schuette